

## **CHAPTER 432**

### **REDUCTION IN GRADE OR REMOVAL BASED SOLELY ON UNACCEPTABLE PERFORMANCE**

1. **PURPOSE.** This Chapter states the requirements and procedures for reducing in grade or removing an employee solely on the basis of unacceptable performance. The Department of the Navy (DON) performance appraisal systems, described in Chapter 430 of this Manual, are the basis for performance-based actions which are outlined in this Chapter.

2. **ASSISTANCE.** Please refer to Chapter 001 of this Manual for the telephone number to call for additional information or further assistance relative to this Chapter.

#### **3. DEFINITIONS**

a. *Critical Element.* A component of a position consisting of one or more duties and responsibilities which contributes toward accomplishing organizational goals and objectives, and which is of such importance that unacceptable performance of the element would result in unacceptable performance in the position.

b. *Days.* Calendar days unless otherwise specified.

c. *Performance Improvement Period.* A reasonable time period allowing the employee to show that he/she can meet the established minimum performance standards for the critical elements of the job.

d. *Reasonable Time.* A sufficient amount of time based on the duties and responsibilities of the position to allow an employee to show whether or not he/she can meet the minimum performance standards.

e. *Reduction in Grade.* The involuntary assignment of an employee to a position at a lower classification or job grading level. An involuntary reduction in grade is always to the first step or entry salary level of the grade to which the employee is reduced.

f. *Removal.* The involuntary separation of an employee from employment with an activity except when taken as a reduction-in-force.

g. *Unacceptable Performance.* Performance on at least one critical element of an employee's position that fails to meet the minimally successful level.

4. **COVERAGE.** This Chapter applies to all DON employees except:

- a. Employees of nonappropriated fund instrumentalities.
- b. Employees outside the United States who are paid in accordance with local national prevailing wage rates for the area in which employed.
- c. Administrative Law Judges.
- d. Individuals in the Senior Executive Service (SES).
- e. Individuals appointed by the President.
- f. Individuals occupying a position not in the competitive service excluded from coverage by regulations of the Office of Personnel Management (OPM).

5. **EXCLUSIONS.** Issues excluded from the procedures outlined in this Chapter include:

- a. A reassignment from one position to another.
- b. A reduction-in-force action.
- c. An adverse action for cause. Such actions are disciplinary in nature and are covered in Chapter 752 of this Manual. However, some performance actions may be taken using Chapter 752 procedures. Consult with Human Resources Office (HRO), Norfolk for the proper use of such procedures.
- d. A reduction to the grade previously held by a supervisor or manager who has not completed the supervisory/managerial probationary period.
- e. The reduction in grade or removal of an employee in the competitive service who is serving a probationary or trial period under an initial appointment or who has not completed one (1) year of current continuous employment under other than a temporary appointment limited to one (1) year or less.
- f. The reduction in grade or removal of an employee in the excepted service who has not completed one (1) year of current continuous employment in the same or similar position.

6. **DELEGATION OF AUTHORITY.** Heads of activities are delegated authority to propose and decide reduction in grade and removal actions which are based on unacceptable performance. Authority to propose and decide these actions shall be redelegated to subordinate managers and supervisors to the extent deemed appropriate. All delegations should be in writing, normally in the form of an activity instruction. HRO Norfolk is available for assistance in preparing delegation instructions.

## **7. TIMING OF ACTIONS**

a. HRO Norfolk should be contacted for technical advice and assistance whenever an action is being considered based on unacceptable performance of an employee. Information will also be provided to employees concerning their procedural rights for matters covered in this Chapter.

b. An employee must first be informed of unacceptable performance of the critical elements of the job and must be given a reasonable time to demonstrate acceptable performance before an advance notice of proposed action can be issued. The amount of time deemed reasonable may vary depending upon the complexity of the job. It should be consistent within similar job categories. If the employee does not meet these requirements, action must be initiated to reduce in grade, reassign, or remove an employee at any time during the performance appraisal cycle that the employee's performance in one or more critical elements of the job becomes unacceptable.

c. Documented instances of unacceptable performance must have occurred within one (1) year of the time of the advance notice in order to be the basis of a proposed reduction in grade or a proposed removal of an employee.

d. The notice period of a proposed action must be no less than thirty (30) days and can be extended for no more than thirty (30) additional days once it is issued.

e. The decision to retain, reduce in grade, reassign, or remove must be made within thirty (30) days after the expiration of the notice period. The decision on a notice of proposed action must be delivered to the employee before the effective date of the action.

## **8. PROCEDURES**

a. An employee whose performance becomes unacceptable is entitled to an opportunity period which consists of a reasonable time to demonstrate acceptable performance. Managers and supervisors must maintain accurate documentation, i.e., samples of work products, counseling records, etc., of specific deficiencies that occurred during the opportunity period.

b. If the employee wishes the activity to consider any medical condition which may contribute to his/her unacceptable performance, he/she shall be given a reasonable time to furnish such medical documentation.

c. The activity shall provide information concerning disability retirement if the employee is eligible.

d. The activity shall be aware of the affirmative obligations which require reasonable accommodations of a qualified handicapped employee.

e. An employee whose reduction in grade or removal is proposed is entitled to:

(1) Representation by an attorney or other designated representative. The employee's choice of a representative can be disallowed if such representation could result in a conflict of interest or position, a conflict with the priority needs of the activity, or would give rise to unreasonable cost to the government. The terms of any applicable bargaining agreement govern the representation for employees in the bargaining unit.

(2) Thirty (30) days advance written notice of the proposed action which identifies:

(a) specific documented instances (work products) of unacceptable performance by the employee on which the proposed action is based.

(b) the critical element or elements of the employee's position involved in each instance of unacceptable performance.

(c) the name and title of the official designated to hear an oral reply and/or receive the written reply.

(d) a reasonable amount of time that the employee is allowed to answer the proposed action orally and/or in writing. An employee may request additional time to respond.

(e) the amount of official time to prepare an answer to the advance notice, if the employee is otherwise in an active duty status.

(3) A written decision which:

(a) identifies those instances cited in the proposed notice found to be supported by evidence.

(b) is signed by an official in a higher position than the official who proposed the action. If the Activity Head signed the advance notice proposing the action, the Activity Head may also sign the decision notice.

(c) specifies the employee's rights of appeal to the Merit Systems Protection Board (MSPB), if applicable, or to file a grievance under negotiated grievance procedures, but not both.

(d) provides a copy of MSPB's regulations, the time limits for filing an appeal to MSPB, the appropriate appeal form, and the address to which it should be forwarded.

(4) Action taken to reduce in grade or remove an employee for unacceptable performance requires preparation of a Request for Personnel Action (SF-52) (see Chapter 295 of this Manual).

## 9. RECORDS

a. When an action is effected, all relevant documentation concerning a reduction in grade or removal based on unacceptable performance will be available for review by the affected employee and the employee's representative. At a minimum, these records shall consist of:

- (1) A copy of the notice of proposed action.
- (2) A copy of the employee's written answer, if any.
- (3) A summary of the employee's oral reply, if one was made.
- (4) A copy of the decision and the reasons for the action.
- (5) Copies of any specific documented deficiencies, which occurred during the opportunity period given to the employee to demonstrate acceptable performance.